

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
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COMMENTS OF FREE PRESS

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I. Introduction

With this *Notice*, the Commission has offered many long-overdue and needed reforms of the current Universal Service Fund, and has proposed a reasonable path for achieving its stated goal of transitioning the current telephony-based fund into a broadband infrastructure support fund. But despite this progress, the reforms as proposed still fundamentally preserve the existing subsidy structure, and with it, many of the current flaws with the USF program. This preservation of the old order is unfortunate, for unless the Commission acts to adequately overhaul the existing telephony program, it will simply transfer many of the existing inefficiencies and wasteful spending onto a new, and possibly more expensive Connect America Fund. This should be of particular concern to this Commission, as inefficiency and waste in the USF fundamentally means higher monthly bills for ratepayers, which in turn means lower overall levels of adoption of communications services. In this brief comment, we highlight areas where the Commission should focus its attention in order to make the fund more efficient in order to reduce the contribution burden borne by ratepayers.

II. The Commission Must Focus on Thorough Reform of the Existing USF. Subsidies Should Only Go Where They Are Actually Needed To Ensure Services Remain Available at Reasonably Comparable Prices.

The *Notice* contains many long-overdue reforms of the current USF that will better ensure ratepayers are not being asked to unnecessarily over-subsidize private telecommunications carriers. But in the *Notice*, the Commission still fails to ask and answer the basic question: where are subsidies actually needed in order to ensure adequate services are available at reasonably comparable prices? The failure to explore this central question means that the efficiency gains from reducing some unnecessary subsidies will only be partial, and could be negated by continuing inefficient and wasteful payments in remaining programs; a practice that

may worsen as support is redirected from the eliminated wasteful programs into the new Connect America Fund. We therefore suggest that the Commission explore a much more comprehensive overhaul of the existing USF, prior to expanding the scope of this subsidy program.

To answer this basic question of where subsidies are actually needed, the Commission must first look at the current availability of communications services and recognize that technological progress has fundamentally changed the USF equation over the past three decades. Most notably, advancements in wireless technologies and the wireless market should have long ago substantially reduced the need for USF subsidies. According to the Commission's own data, 99.6 percent of the total U.S. population, and 98.5 percent of the U.S. rural population is served by at least one mobile wireless voice provider.¹ Furthermore, according to a 2007 industry-funded study, 98 percent of the customers living in study areas served by a subsidized wireless carrier also have service available from one or more unsubsidized wireless carriers.² These and other data suggest that a substantial amount of USF resources are being spent in areas where unsubsidized competitive services are available, wasting these scarce resources and distorting market competition. If there are one or more wireless or wired companies offering reasonably comparable voice telephony services, then the case for continued subsidies seems difficult to make.

But beyond the problem of subsidies going to areas where unsubsidized carriers currently operate is the problem of unnecessary subsidies themselves. As the Commission points out in the

¹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fourteenth Report, WT Docket No. 09-66, FCC 10-81 (released May 20, 2010) (*Fourteenth Report*).

² Nicholas Vantzelfde, "The Availability of Unsubscribed Wireless and Wireline Competition in Areas Receiving Universal Service Funds," Criterion Economics, (June 13, 2007).

Notice, in 2010 “on average competitive ETCs received approximately \$2.65 per supported line per month, compared to an average of \$3.35 per supported line per month for incumbents.”³ Our own past analysis indicated that median monthly per supported line cost was just 31 cents, with 94 percent of all supported lines receiving less than \$10 per month in subsidies.⁴

Such low amounts of monthly support per line, in context of other factors such as triple play revenue streams and competitive pressures, indicates that a substantial amount of existing USF support may not be needed in order to ensure that adequate services are available at reasonably comparable prices. Fortunately, it appears that the Commission is beginning to understand this reality in the current *Notice*. For example, the Commission rightly proposes to eliminate the Interstate Access Support program, a large ILEC slush fund that in 2010 distributed on average 44 cents for each supported line.⁵ As the Commission noted, no defender of IAS bothered to note how losing this 44 cents per line per month would jeopardize the availability of reasonably priced services, because it’s quite clear that no such subsidies are actually needed.

The same conclusion can likely be drawn for the bulk of the supported lines and supported areas: the absence of USF support will not likely lead to consumers that live in those areas being deprived of adequate quality services at reasonably comparable prices. While we support many of the near-term reforms proposed in the *Notice*, (e.g. the proposed elimination of IAS, LSS, and the identical support rule; the proposed reduction of reimbursement rates; the proposed elimination of subsidies for corporate overhead expenses), the Commission’s job of reform is not complete until it radically overhauls the threshold for how carriers demonstrate their need for ongoing support from the USF. The Commission must devise a “stress test” and apply it to each

³ *Notice*, para. 244.

⁴ See Reply Comments of Consumers Union, Consumer Federation of America, Free Press and New America Foundation, WC Docket No. 05-337, June 8 (2008).

⁵ *Notice*, para. 231.

USF recipient, accounting for all existing infrastructure, services and revenue streams, in order to ensure that subsidies are truly going to areas where they are needed to implement the goals of the Act. Ratepayers have poured tens, if not hundreds of billions in direct and indirect subsidies into these networks, and it is perfectly reasonable for the Commission to ask if any more is actually needed. In short, ratepayers have likely paid many times over for the cost of carrier of last resort obligations, and should not be asked to pay a cent more unless absolutely necessary. It appears with the near ubiquitous availability of mobile wireless services and the improved nature of satellite services, that the continuing need for the high-cost telephony fund is questionable at best.

III. Transforming the High-Cost Fund into the Connect America Fund is A Long-Overdue Evolution. However, The Need for a Large CAF Has Not Yet Been Demonstrated and Without Adequate Structural Safeguards, Ratepayer Funds Could Be Wasted.

The Commission's broadband agenda is rightly focused on ensuring that all Americans have access to, and adopt affordable, high-quality broadband communications services. And while there has long been a perception of a large rural broadband problem, the most recent data confirms that this problem is small in scope, and may be overcome with advances in technology and better coordination directed by state and local policymakers -- not necessarily more federal USF subsidies. According to the recently released NTIA National Broadband Map data, 98.3 percent of the U.S. population lives in areas where basic high-speed Internet services are available, and 93 percent of the U.S. rural population lives where such services are available.⁶ In only 5 of the 50 U.S. states is basic broadband available to less than 90 percent of the *rural*

⁶ See "Broadband Statistics Report, Broadband Availability in Urban vs. Rural Areas," and "Broadband Statistics Report, Access to Broadband Technology by Speed," National Broadband Map, NTIA and FCC, February 2011. Basic broadband is defined as the FCC defines "basic broadband tier 1," or greater than 768 kilobits per second (kbps) downstream, and greater than 200 kbps upstream.

population in those states.⁷ Given that 3G mobile wireless broadband currently reaches over 98 percent of the population,⁸ and the reasonable expectation that 4G services will in the next few years reach the same level of the population,⁹ and given the improvements in satellite broadband technology and the Commission's own willingness to meet our universal service goals for the hardest to serve with satellite -- the need for a CAF, much less a large perpetual CAF, has not yet been demonstrated.

If the Commission's primary goal is to get as many people using broadband as possible, then the best thing it can do is put more money back into ratepayer's pockets, and stop distorting markets with unnecessary subsidies distributed through a subsidy program built for a completely different era. Given that the broadband availability problem is small in scope and limited to primarily a few states, but that the broadband adoption problem is widespread across the entire country, it would be prudent for the FCC to focus on reducing the size of the high-cost fund and increasing broadband adoption through training and direct end-user subsidies.

IV. The Commission's Near-Term USF and ICC Reform Proposals Must Focus on Reducing Consumer Burden in Concentrated Markets, Not On Revenue Replacements or Other Regulatory Gifts to Incumbent Carriers.

It is encouraging that this Commission in the instant *Notice* chose to not automatically endorse increases to the Subscriber Line Charge as the prior FCC did in the *2008 ICC Reform Notice*, or as the National Broadband Plan appears to endorse. Simply put, there is absolutely no

⁷ According to the National Broadband Map data, 72.6 percent of the 242,000 rural Alaska population can access basic broadband; 51.7 percent of the 1.8 million rural Indiana population can access basic broadband; 89 percent of the 486,000 rural New Mexico population can access basic broadband; 86.2 percent of the 2.1 million rural Virginia population can access basic broadband; and 71.9 percent of the 993,000 rural West Virginia population can access basic broadband.

⁸ *See Fourteenth Report.*

⁹ Verizon has announced it will deploy 4G services to its entire current 3G footprint, and other carriers are expected to do the same, with or without additional government favors. *See e.g.* Dave Burstein, "US LTE 2016: 96-98% Likely," Fast Net News, March 23, 2011.

evidence whatsoever that reductions in access charge revenues need to be “recovered” through regulatory mandate, nor that the current \$6.50 SLC would need to increase in order for carriers to earn their common line revenue requirement. In fact, all available evidence suggests that for the substantial majority of residential LEC customers, the current SLC is already *too high*. In the cost studies that followed the *CALLS Order*¹⁰ (which imposed the current \$6.50 SLC cap) the Commission concluded that approximately 82 percent of residential and single-line business price-cap lines had forward-looking costs below \$6.50.¹¹ Because of substantial improvements in technology, this 2002 results is likely an underestimate of the proportion of lines that are over-recovering. Therefore, it appears that even a “modest” \$1.00 primary line SLC increase would be too high, as it would not only offset the full value of moving to a lower rate (e.g. a reciprocal rate), but would also fail to account for the current level of SLC over-recovery. Therefore, we would prefer that the Commission revisit these cost studies in a comprehensive manner prior to implementing any SLC increases. We caution the Commission that over-recovery of loop costs for loops that offer unsubsidized services (such as DSL or IPTV) is a possible violation of Section 254(k) of the Act.¹²

¹⁰ *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (*CALLS Order*), *aff’d in part, rev’d in part, and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001), cert. denied, Nat’l Ass’n of State Util. Consumer Advocates v. FCC, 70 U.S.L.W. 3444 (Apr. 15, 2002).

¹¹ See footnote 82, *In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Order, FCC 02-161, rel. June 5, 2002.

¹² 47 U.S.C. § 254(k) states that a “telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocations rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.”

There are other long neglected reforms that the Commission should attend to prior to dipping further into ratepayer pockets. As the Commission points out in the *Notice*, the X-Factor has not been updated in a decade, failing to account for productivity gains in the setting of price caps. The Commission has similarly failed to carry out its past prudent decision to base Rural Carrier support on forward-looking, not historical costs. And most important, the agency's "no barriers" policy has for too long failed to account for the substantial revenues earned by subsidized carriers from data and other unregulated services. It simply no longer makes any sense (if it ever did) for the agency to allow rural carriers to spend as much as they can on their networks, earning a rate of return on these historical costs while only considering the small sliver of regulated local telephony revenues earned using these USF subsidized networks. An efficient USF support mechanism would consider a network's forward-looking costs and revenue earning potential in order to determine support needs, *after* conducting a stress test to see if support was needed at all. Unfortunately, this kind of transformative reform that puts ratepayer needs and efficiency before legacy considerations is missing from the proposals in the *Notice*.

As we stated above, the Commission has failed to adequately demonstrate the need for a CAF or even justified how large such a fund should be and how long it would last. We urge the Commission to perform such a justification prior to launching a new subsidy program, and instead focus on fully reforming the existing High-Cost Fund. However, if the FCC is determined to proceed without such justification, we strongly urge it to pay special attention to the public service obligations of CAF recipients, as identified in the *Notice*. First, Congress clearly demonstrated in the American Recovery and Reinvestment Act that public funds should only be used to support open and non-discriminatory broadband networks. Second, since the rates of the services offered over CAF-supported networks will not be regulated, any future

ongoing support must be based on a consideration of the network's total earned revenues. It would be very inefficient for ongoing support to be doled out to carriers who also earn massive unregulated profits off of their customers on networks also paid for by USF. Third, as the Commission recognizes in the *Notice*, several states have hamstrung their own deployment efforts through incumbent-sponsored laws that restrict local municipalities from filling unmet broadband needs.¹³ Ratepayers nationwide should not be asked to pay for the shortsightedness of these states, and certainly should not be asked to give scarce subsidies to the very same companies who lobbied to have these anti-municipal broadband laws enacted in the first place. We suggest that any states with such laws be placed at the back of the CAF line.

V. Conclusion

The Commission should be commended for putting down on paper so many long-overdue USF reform proposals. It has rightly identified several areas of massive and unnecessary waste, and consumers everywhere will benefit from swift implementation of these reforms. However, the exercise here seems to be incomplete, looking for rationales to eliminate some existing subsidy streams without exploring whether subsidies are needed in certain areas at all. That there's no justification for continuing IAS, LSS or identical support subsidies is merely a sign that much of the existing USF support is not needed at all in order to ensure Americans have access to quality services at reasonable prices.

We strongly urge the FCC to ask the basic questions about overall subsidy need, and be guided by the goal of reducing the subsidies to the absolute minimal level needed in order to realize the express goals of the Act. Thus, while the agency should have long ago recognized the convergence benefits of broadband technology and transformed the High-Cost Fund into a CAF,

¹³ *Notice* at para. 299.

it has failed to justify in this *Notice* the need for a CAF or bound it with limits. This failure to justify or bound, along with carryover of many of the existing inefficiencies of the current USF is dangerous, as it will inevitably lead to increased ratepayer burden, and ultimately will dampen broadband adoption. The prudent course here is to fix what's broken before expanding what's broken.

Respectfully Submitted,

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